Supreme Court, U. S.
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No. 76-788

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

Fern Howland, Mattie Storey, Jeannet Amodt, Rosalie Roe, and Constance Perez,

Petitioners,

vs.

City of Monterey, a public body, corporate and politic, et al.,

Respondents.

Brief In Opposition To The Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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QUESTION PRESENTED

The sole question presented is whether the Court of Appeals properly held that the findings of fact of the District Court were not clearly erroneous.

STATEMENT OF THE CASE

The procedural and factual background of this matter is fairly presented in the unpublished opinion of the Court of Appeals dated June 11, 1976, a copy of which is attached as Exhibit A to the Petition herein.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Contrary to petitoners' assertions none of the questions presented by petitioners is involved in this petition. The petition

actually seeks to do no more than relitigate factual determinations made by the District Court and held to be not clearly erroneous by the Court of Appeals. No substantial issues of law are presented for the determination of this Court.

Petitioners assert that the questions presented are:

1. Does the judgment of a State Court after a plenary trial bar a subsequent Title VII action?

2. Does res judicata bar claims of discrimination for acts subsequent to a State Judgment?

3. Does an employment system which denies a woman the opportunity for promotion by reason of lack of experience, which she has been denied as a condition of her employment, violate the requirements of Title VII?

The question of whether a state court judgment after a plenary trial may

bar a subsequent Title VII action was abandoned by petitioners in the Court of Appeals. See Opinion of the Court of Appeals, Exhibit A to the Petition at 15. Respondents have conceded that res judicata does not bar claims of discrimination for acts subsequent to a state court judgment. See Exhibit A to the Petition at 15.

Finally, Petitioners' third question similarly is not present in this case. The opinion of the Court of Appeals correctly points out that petitioner Howland was given an opportunity to take the examination for the position of Patrol Sergeant and was given an oral interview by a board consisting of five people selected by the City's personnel officer. Four members of the board were from outside the police department and three were

from outside the city administration. Only one member of the board rated petitioner Howland qualified in all significant respects. As a result, although her name was placed on the list of eligible applicants, petitioner ultimately was not selected for the job. Exhibit A to the Petition at 18.

The repeated suggestion that the City's chief of police unlawfully discriminated against petitioners raises a question of fact, not law. The factual questions were resolved in every instance against petitioners by the district court and those findings were upheld on appeal. No purpose would be served by this Court again reviewing these findings.

CONCLUSION

This case is of so little substance that the court below chose to deal with it

in an unpublished opinion. None of the considerations governing the grant of a writ of certiorari set forth in Rule 19 of the Supreme Court Rules, or any other substantial question of law or equity, is present. Respondents respectfully submit that the petition herein should be denied.

Dated: January 5, 1977.

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